IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5983 of 1998

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M/S Super Inducto Steels Limited, a Company incorporated under the Indian Companies Act having its Office at Sudama Palace, Kankarbagh, Patna -800 020 and Factory at Purnia through its Director Sri Shaligram Jaiswal son of late Banke Bihari Jaiswal resident of Simra Bakhtiarpur, District Saharsa

.... Petitioner

Versus

1. Bihar State Electricity Board, a body constituted under the Indian Electricity (Supply) Act having its Registered Office at Bailey Road, Patna through its Chairman.
2. The General Manager-cum-Chief Engineer, Koshi Area Electricity Board, Saharsa
3. The Electrical Superintending Engineer, Purnia Electric Supply Circle, Purnia.
4. The Electrical Executive Engineer, Electric Supply Division, Purnia.
5. The Executive Engineer Commercial & Revenue Division, Purnia Electric Supply Circle, Purnia

.... Respondents

With

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Civil Writ Jurisdiction Case No. 8664 of 1999

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M/S Super Inducto Steels Limited, a Company incorporated under the Indian Companies Act having its Office at Sudama Palace, Kankarbagh, Patna -800 020 and Factory at Purnia through its Director Sri Shaligram Jaiswal son of late Banke Bihari Jaiswal resident of Simra Bakhtiarpur, District Saharsa

.... Petitioner

Versus

1. Bihar State Electricity Board, a body constituted under the Indian Electricity (Supply) Act having its Registered Office at Bailey Road, Patna through its Chairman.
2. The General Manager-cum-Chief Engineer, Koshi Area Electricity Board, Saharsa
3. The Electrical Superintending Engineer, Purnia Electric Supply Circle, Purnia.
4. The Electrical Executive Engineer, Electric Supply Division, Purnia.
5. The Executive Engineer Commercial & Revenue Division, Purnia Electric Supply Circle, Purnia

.... Respondents

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Appearance :

(In CWJC No.5983 of 1998)

For the Petitioner : Mr. Suraj Samdarshi,
Mr. Mrigank Mauli,
Mr. Prince Kumar Mishra
Mr. Sanket, Advocates

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For the Respondents : Mr. Vinay Kirti Singh, Sr. Advocate
Mr. Vijay Kumar Verma,
Mr. Akhileshwar Singh, Advocates
(In CWJC No.8664 of 1999)
For the Petitioner : Mr. Suraj Samdarshi,
Mr. Mrigank Mauli,
Mr. Prince Kumar Mishra
Mr. Sanket, Advocates
For the Respondents : Mr. Vinay Kirti Singh, Sr. Advocate
Mr. Vijay Kumar Verma,
Mr. Akhileshwar Singh, Advocates

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 10-08-2018

The main common prayer in both these writ petitions is for quashing the impugned bills of A.M.G. charges having been raised by the respondents for the periods 1997-98 and 1998-99 respectively on the basis of the contract demand of 4400 KVA in place of 3000 KVA; and for connected reliefs.

2. For the sake of convenience, the material facts, which are substantially common to both these writ petitions, are being taken from CWJC No. 5983 of 1998 relating to the period 1997-98.

3. The petitioner-Company obtained electrical connection from the respondent-Bihar State Electricity Board (subsequently succeeded by the Bihar State Power Holding Company, hereinafter referred to as "the Board") for the purposes of running its Induction Furnace on a contract demand of 1600 KVA. This was subsequently enhanced to 3000 KVA with the installation of a second Induction Furnace in July 1996. Thereafter on 26.03.1997, the petitioner applied

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for enhancement of load from 3000 KVA to 4400 KVA in view of the installation of a new rolling mill. Intimation was given to the Assistant Commissioner, Central Excise Department by letter dated 23.09.1997 (Annexure-2) with notice to various officials of the Board that its old Induction Furnace of 3.5 M/T capacity with an additional (standby) crucible had suffered a breakdown and it had been decided to close the Furnace for an indefinite period. The petitioner then approached the Electrical Inspector on 20.12.1997 for energization of one 2000 KVA transformer and removal of one 1900 KVA transformer. The former was for the purpose of the rolling mill and the latter was connected to the non-functional Induction Furnace. The Electrical Inspector granted permission to energize the transformer by his memo no. 5548 dated 24.12.1997 (Annexure-4) in terms of Rule 63 of the Indian Electricity Rules, 1956 subject to rectification of certain defects pointed out therein. The Electrical Superintending Engineer, Purnia was also informed by letter dated 27.12.1997 (Annexure-5) with regard to disconnection of 1900 KVA transformer and installation of 2000 KVA transformer associated with the rolling mill. It was also duly stated that the contract demand remained the same and the transformer capacity would remain within 150% of the contract demand. The Electrical Executive Engineer by letter dated 19.01.1998 required the petitioner to complete the necessary formalities for alteration of load with

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respect to the installation of rolling mill in different premises, which otherwise was contrary to the Tariff. This led the petitioner to prefer Electrical Dispute Case No. 16 of 1998 before the Electrical Inspector (Annexure-7), who directed status quo to be maintained, considering that the Board was not accepting the closure of the Induction Furnace and was insisting for enhancement of load. A disconnection notice was issued on 31.01.1998 (Annexure-8) on the ground that the petitioner was utilizing the load for a purpose other than the purpose assigned in the agreement. This was challenged in CWJC No. 1000 of 1998 which was disposed of on 10.02.1998 (Annexure-9) with a direction to the respondent to keep the disconnection notice in abeyance until final order was passed by the Electrical Inspector. By subsequent order dated 13.02.1998, the electric supply was directed to be restored as it had since been disconnected.

4. The petitioner received the impugned A.M.G. bills dated 07.07.1998 for the period 1997-98 (Annexure-10) and for the period 1998-99 (Annexure-14 in CWJC No. 8664 of 1999) which were calculated on the basis of a contract demand of 4400 KVA instead of 3000 KVA. The petitioner's objection by letter dated 14.07.1998 was not acceded to and the Electrical Superintending Engineer vide letter dated 18.07.1998 (Annexure-12) directed the petitioner for payment of the A.M.G. bill as raised and no correction therein was required. The

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petitioner calculated the amount of A.M.G. Bill on the basis of 3000 KVA and arrived at Rs. 26,98,594/- being 50% of the total A..M.G amount as its liability for the purpose of preferring claim for remission under Clause 13 of the agreement and accordingly filed its claim.

5. In due course, the Electrical Inspector passed his order dated 03.10.2001 in Electrical Dispute Case No. 16 of 1998 which had been preferred by the petitioner against the direction of the Electrical Executive Engineer for alteration of load in view of the installation of rolling mill in different place. It was held by the Electrical Inspector, inter alia, that Induction Furnace and the re-rolling mill had been installed in the same premises which belonged to the petitioner and that no irregularities had been committed by the petitioner who had neither misused the electric supply nor violated the provisions of the agreemnt and the electric supply was within the sanctioned load and the petitioner was using the electric energy as per unit.

6. Learned counsel for the petitioner submits that the respondent-Board had acted arbitrarily in raising the impugned A.M.G. bills on the basis of the contract demand of 4400 KVA in place of the correct 3000 KVA, which is contrary to its own actions. It transpires from the inspection report dated 27.03.1999 that the officials found and duly recorded that only one Induction Furnace was operational. The said inspection report itself recorded that the contract demand

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was 3000 KVA. Significantly there was also no finding that the contract demand of 3000 KVA had been exceeded at any point with reference to the maximum demand recorded. In that view of the matter, the A.M.G. bills could not have been raised in terms of Clause 16.9 of 1993 Tariff, which contemplates that the actual maximum demand must be treated as the contract demand for the financial year only if it exceeds 110% of the contract demand. Besides, in view of Clause 16.4 of the 1993 Tariff, the transformer capacity also remained within the permissible limit of 150% of the contract demand as communicated by the petitioner vide letter dated 27.12.1997 (Annexure-5).

7. Apart from other submissions and contentions made on behalf of the petitioner, the most significant is that the Electrical Inspector was the authority competent to resolve any dispute between the consumer and the supplier as provided under Clause VI (3) of the Schedule to the Indian Electricity Act, 1910. The said dispute had duly been raised in Electrical Dispute Case No. 16 of 1998 which has finally been decided in terms of the order dated 03.10.2001 and the same has attained finality.

8. Learned senior counsel for the respondent-Board, on the other hand, resists the writ petitions, submitting that the petitioner had illegally utilized the load for running the rolling mill though the same had been provided under the agreement for the

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purpose of the Induction Furnace. The load relatable to the rolling mill was thus unauthorized and the petitioner ought to have completed the formalities for taking a new connection for such purpose. As such, the impugned A.M.G. bills on the basis of 4400 KVA have correctly been raised, taking into account the contract demand of 3000 KVA which had been permitted for the Induction Furnace, and separate extra load relatable to the rolling mill. It is submitted that the petitioner had itself applied for enhancement of load from 3000 KVA to 4400 KVA on 26.03.1997 which had been necessitated on account of the installation of the rolling mill.

9. Having heard learned counsel for the parties and on careful consideration of the materials available on record, I find substance in the submissions made on behalf of the petitioner. It is not in dispute that the petitioner preferred Electrical Dispute Case No. 16 of 1998 against the letter dated 19.1.1998 issued by the Electrical Executive Engineer requiring the petitioner to seek alteration of load in view of the installation of the rolling mill in different premises. The Electrical Inspector directed for maintaining status quo. Further, the electric supply of the petitioner, which had been disconnected, was directed to be restored in terms of the order dated 10.02.1998 passed by this Court in CWJC No. 1000 of 1998. The Electrical Dispute Case no. 16 of 1998, in which the respondent-Board had duly participated and

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was heard, finally came to be adjudicated on 03.10.2001 in favour of the petitioner, inter alia, holding that the Induction Furnace as well as rolling mill were installed on the same premises belonging to the petitioner and that there was no illegality in that behalf nor any loss had been caused to the Board. It is relevant to state that the Board had not expressed any reservation at any stage with regard to Electrical Dispute Case No. 16 of 1998 being decided at the hands of the Electrical Inspector. It is also not in dispute that the said case was disposed of as far back as in the year 2001 but the same was never challenged by the respondent-Board and hence it attained finality. The Board therefore cannot resile from the findings of the Electrical Inspector after lapse of a considerable number of years which must be treated as binding upon both the parties.

10. In view of the categorical findings of the Electrical Inspector in his order dated 03.10.2001 in Electrical Dispute Case No. 16 of 1998, it must be held that the respondent-Board could not have raised the A.M.G. bills for the periods 1997-98 and 1998-99 on the basis of the contract demand of 4400 KVA. The impugned bills are accordingly quashed with a direction to the respondent-Board to raise fresh A.M.G. bills for the periods 1997-98 and 1998-99 respectively on the basis of 3000 KVA contract demand.

11. As regards the prayer with regard to remission in

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terms of Clause 13 of the agreement, learned counsel for the petitioner shall be at liberty to approach the concerned authority with an appropriate representation to be considered and disposed of in accordance with law and in the light of the decision of a Division Bench of this Court in CWJC No. 5614 of 1999 (Jai Mangla Steels Pvt. Ltd. Vs. Bihar State Electricity Board and Ors.) and analogous cases.

12. Both these writ petitions stand allowed with the aforesaid observations and directions.

(Vikash Jain, J)

B.T/-

AFR/NAFR	AFR
CAV DATE	N.A
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Transmission Date	N.A.

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